applicable, service marks shall be registrable, in the same manner and with the same effect as are trademarks, and when registered they shall be entitled to the protection[s, rights and privileges] provided in this chapter in the case of trademarks. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

Sec. 4 [15 U.S.C. 1054]. Collective marks and certification marks registrable

Subject to the provisions relating to the registration of trademarks, so far as they are applicable, collective and certification marks, including indications of regional origin, shall be registrable under this chapter, in the same manner and with the same effect as are trademarks, by persons, and nations. States, municipalities, and the like, exercising legitimate control over the use of the marks sought to be registered, even though not possessing an industrial or commercial establishment, and when registered they shall be entitled to the protection[s, rights and privileges] provided in this chapter in the case of trademarks, except in the case of certification marks when used so as to represent falsely that the owner or a user thereof makes or sells the goods or performs the services on or in connection with which such mark is used. Applications and procedure under this section shall conform as nearly as practicable to those prescribed for the registration of trademarks.

BACKGROUND AND JUSTIFICATION

Section 4 of the Lanham Act, 15 U.S.C. §1054, states that certification marks and collective marks ''shall be entitled to the protection provided'' to trademarks. This section expresses the congressional intention that all certification marks and collective marks be treated with equivalent rights and protections to trademarks, except where Congress, by statute, has expressly provided otherwise.

It is common in trademark, service mark, collective mark and certification mark licenses to include provisions under which licensees acknowledge the validity of an agree not to challenge the marks. These ''no challenge'' provisions play an important role in protecting the marks, reducing mark owners' litigation costs, and providing assurances to licensees that the marks they are investing in will have continued validity. After applying principles of equity, many courts have upheld such ''no challenge'' provisions in trademark licenses and dismissed validity challenges.

Recently, the Second Circuit Court of Appeals in the case of *Idaho Potato Commission* v. *M & M Produce Farm and Sales*, 335 F.3d 130 (2d Cir. 2003), interpreted the Lanham Act as requiring that certification marks be treated differently from trademarks with respect to ''no challenge'' provisions. The court reasoned that the public policy underlying certification marks was more analogous to the public policy underlying patents. As a result, the court ruled that licensee certification mark no challenge provisions are governed by the Supreme Court's decision in *Lear, Inc* v. *Adkins*, 395 U.S. 653 (1969). The Second Circuit's decision appears to have gone beyond congressional intent relating to certification marks. Certification marks have none of the preclusive effects of patents. Rather, the competitive effects of certification marks are the same as trademarks. Certification marks guard the public from deception and protect mark owners' and their licensees' investments. Like trademarks, certification marks provide information vital to consumers' purchasing decisions. Certification marks help consumers identify goods and services that have the quality and safety features they want.

It is important to remove any perceived distinction between certification marks and collective marks as compared to trademarks, except as expressly provided otherwise by statute. Therefore, this bill clarifies Congress, original intentions regarding the treatment of certification marks and collective marks through this amendment to Section 4 of the Act. Licenses governing certification marks, and the provisions contained in such licenses, should be treated no less favorably than licenses for trademarks and other marks. ''No challenge'' provisions, and other non-quality related provisions in certification mark licenses or agreements are to be accorded the same respect and treatment, and are to be the subject to the same principles of equity, as like provisions in trademark licenses and agreements. While nothing in this revision to the Lanham Act should be read as impairing a court's ability to apply existing principles of equity, where their application is appropriate, such licensing provisions are essential to preserving the public benefits of such marks without increasing the litigation and other transactional costs for certification mark owners. Similarly, certification and collective mark owners have the same remedies for infringement of their marks that are available to trademark owners.

Section 3 of the Lanham Act, 15 U.S.C. §1053, is amended in the same manner as Section 4 to maintain the parallel language of the two sections and to evidence congressional intent that all four marks protected by the Lanham Act are to be accorded the same rights and protections except as specifically provided by statute.

HONORING WORLD WAR II VETERANS

Mr. BAYH. Mr. President, throughout my service to the State of Indiana, I have been honored to represent thousands of Hoosier veterans who have fought bravely for our country. It is with great honor that I recognize the sacrifices of these three courageous men, Private First Class Leo Wilson Landess, Private First Class Robert Eugene Osborn, and Private First Class John Lee Reynolds, who were called to service in World War II to safeguard American freedom. These valiant young men defended our Nation and our liberty in the face of evil, before they had a chance to receive a high school diploma. It was more than 60 years ago that these three men left Governor I.P. Gray High School and were inducted into the Army. I applaud the Jay County High School Corporation for honoring these three World War II veterans, on June 12, 2004.

Their effort and unwavering commitment along with 120,000 other Hoosier World War II veterans, played a vital role in the long and difficult process of helping others enjoy freedom and democracy. By the end of the war, almost 13,000 Hoosier soldiers lost their lives. I am reminded by a quote by Douglas MacArthur, ''The soldier, above all other people, prays for peace, for he must suffer and bear the deepest wounds and scars of war.'' I would like to express my deep appreciation for their dedicated service and the many sacrifices they made on behalf of our Nation.

MISSOURI RIVER DROUGHT CONSERVATION PLAN

Mr. JOHNSON. Mr. President, last Tuesday, September 14, the Senate Appropriations Committee reported out the Fiscal Year 2005 Interior Appropriations bill on a unanimous and bipartisan vote. The bill funds several of the Federal agencies that are responsible for managing millions of acres of land in South Dakota, including the U.S. Forest Service, the Fish and Wildlife Service, and the National Park Service. Included in that bill was a provision directing the Corps of Engineers to immediately implement the drought conservation measures outlined in the 2004 Missouri River Master Water Control Manual. This is an important provision that will better balance the competing uses of Missouri River water and, more importantly, bring a sense of equity and fair play to a process long-slanted toward a single group of navigation interests.

Perhaps no Federal agency has a more direct impact on South Dakotans than the U.S. Army Corps of Engineers. The Corps of Engineers has a tough job in South Dakota, balancing a host of competing and, it appears from time to time, mutually exclusive interests. However, on the key issue of managing the Missouri, the Corps has consistently come up short as a steward of America's longest river. With a current water storage rate of 35.9 million acre-feet, the main-stem Missouri River reservoirs are at the lowest level in history. The provision included in the Interior Appropriations bill faces up to this reality by taking a strong step toward conserving our water resources.

Unfortunately, yesterday, in an unprecedented maneuver to strike out and cancel the express will of the Appropriations Committee, a provision was inserted in the fiscal year 2005 Veterans, Housing and Urban Development, and Independent Agencies Appropriations bill that cancels out the drought conservation plan. The proponents of this new provision had already been rebuffed last week when attempting to change the original section. Surely we can find some common ground for the upstream states struggling with the lack of water flow. I expect an uphill battle, but I will do everything I can to fight for the needs of upstream states.

JUMPSTART OUR BUSINESS STRENGTH ACT

Mr. SMITH. Mr. President. I rise to speak about an important piece of legislation that is pending before Congress. The Jumpstart Our Business Strength, JOBS, Act, also known as FSC/ETI. This bill was passed by both the House and the Senate earlier this year and now awaits the appointment of conferees by the House of Representatives. As a Senate conferee, I am hopeful that we can move quickly toward a conference with the House and